Supreme Court, U.S.
FILED
JUL 26 1989
JOSEPH F. SPANIOL
CLERK

No. 88-2138

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ILEENE GRAY, formerly ILEENE HEFFRON,

Petitioner,

v.

HARRY ROTH, Fiduciary of the Estate of Joseph Heffron,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
COURT OF APPEALS OF IOWA

# RESPONDENT'S BRIEF IN OPPOSITION

SCOTT H. WALTERS
1503 BRADY STREET
DAVENPORT, IOWA 52803
(319)323-8348
Counsel of Record
for Respondent

No. 88-2138

---

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

---

ILEENE GRAY, formerly ILEENE HEFFRON,

Petitioner,

v.

HARRY ROTH, Fiduciary of the Estate of Joseph Heffron,

Respondent.

---

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
COURT OF APPEALS OF IOWA

---

# RESPONDENT'S BRIEF IN OPPOSITION

---

SCOTT H. WALTERS
1503 BRADY STREET
DAVENPORT, IOWA 52803
(319)323-8348
Counsel of Record
for Respondent

## CERTIFICATE OF SERVICE

I, Scott H. Walters, a member of the Bar of the Supreme Court of the United States and counsel of record for Respondent herein, hereby certify that on July 26, 1989, I served three copies of the attached Respondent's Brief in Resistance on Ileene Gray, Petitioner herein, by depositing such copies in the United States Post Office, Davenport, Iowa, with first class postage prepaid, properly addressed to the post office address of Thomas C. Fritzsche, the above-named Petitioner's counsel of record, at 300 Northwest Bank Tower, Bettendorf, Iowa 52722.

All parties required to be served have been served.

Dated July 26, 1989.

Scott H. Walters

Scott H. Walters
1503 Brady Street
Davenport, Iowa 52803

## LIST OF PARTIES

Petitioner is the sole appellant in the court below.

Respondent, named by Petitioner as Harry Roth, Fiduciary of The Estate of Josseph Heffron, Defendant-Appellee in the court below, was deceased at the time Petitioner filed her petition for a writ of certiorari; and Northwest Bank & Trust Company of Davenport, Iowa, is the successor fiduciary in the Estate of Joseph Heffron. Pursuant to U.S. Supreme Court Rule 40.3, Northwest Bank & Trust Company should be substituted as Respondent.

## TABLE OF CONTENTS

Page

CERTIFICATE OF SERVICE . . . . . i

LIST OF PARTIES . . . . . ii

TABLE OF AUTHORITIES . . . . . iv

STATEMENT OF THE CASE . . . . . 1

REASONS WHY THE PETITON SHOULD BE DENIED

I. SUMMARY OF ARGUMENT . . . . . 10
ARGUMENT . . . . . 10

II. SUMMARY OF ARGUMENT . . . . . 22
ARGUMENT . . . . . 23

CONCLUSION . . . . . 30

## TABLE OF AUTHORITIES

CASES: Page

Bunker v. Bunker,
552 S.W. 2d 641
(Ark. 1977) . . . . . 12,13,16,18

Conlon by Conlon v. Heckler,
719 F. 2d 788
(5th Cir. 1983) . . . . . 17,18,19

Dillon v. Dillon,
176 N.W. 2d 362 (Wisc. 1970) . . . 20

Heath v. Alabama,
474 U.S. 82,
88 L.E. 2d 387,
106 S. Ct. 433 (1985) . . . . . 12,23

In the Interest of W.E.G.,
342 N.W. 2d 900
(Iowa Ct. App. 1983) . . . . . 26

International Shoe Co. v. Washington,
326 U.S. 310,
90 L.Ed. 2d 95,
66 S.Ct. 154 (1945) . . . . . 20,21

Johnson v. Muelberger,
340 U.S. 581,
95 L.Ed. 552,
71 S.Ct. 474 (1951) . . . . . 27,28

Mitchim v. Mitchim,
518 S. W. 2d 362 (Texas 1975) . . 20

Mizner v. Mizner,
439 P. 2d 679 (Nev. 1968) . . . . 20

Shill v. Careage Corp.,
353 N.W. 2d 416 (Iowa 1984) . 26,29

Soule v. Soule,
14 Cal. Rptr. 417
(Cal. App. 1961) . . . . . 20

Vanderbilt v. Vanderbilt,
354 U.S. 416,
1 L.Ed. 2d 1465,
77 S.Ct. 1360 (1957) . . . . . 19

Whitaker v. Whitaker,
230 S.E. 2d 486 (Georgia 1976) . . 20

Williams v. North Carolina,
325 U.S. 226,
89 L. Ed. 1577,
65 S. Ct. 1092 (1945) . . . 24,25,29

Statutes:

1963 Ark. Acts 119, Sect. 1, 332
(current version at Ark. Stat.
Ann. Sect. 16-58-120 (1987) . . 14-16

Other Authorities:

American Law Institute, Restatement
(Second) of Conflict of Laws
(2d ed. 1971):

Sect. 71, Comment b . . . . . 25

Sect. 13, Comment b . . . . . 25

No. 88-2138

---

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

---

ILEENE GRAY, formerly ILEENE HEFFRON,
Petitioner,

v.

HARRY ROTH, Fiduciary of the Estate of
Joseph Heffron,
Respondent.

---

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
COURT OF APPEALS OF IOWA

---

# RESPONDENT'S BRIEF IN OPPOSITION

---

## STATEMENT OF THE CASE

Petitioner and Decedent were married on August 3, 1977, separated on or about May 24, 1978, and were divorced by decree of the Chancery Court, Lanoke, Arkansas entered on September 13, 1978. At the

time of the separation on May 24, 1978, both parties were residents of Arkansas.

But for for a ten month period when Decedent resided with Claimant in Arkansas in 1977 and 1978, Decedent maintained his residence at property owned by the late Harry Roth, the Fiduciary of Decedent's Estate, located beside the Wapsipinicon River in Clinton County, Iowa, (the "Wapsi Property") from 1967 until 1982, when, due to Decedent's declining health, Decedent moved to an apartment in DeWitt, Iowa. Decedent had agreed with Roth to act as caretaker of the Wapsi property in exchange for being allowed by Roth to reside there.

In May of 1978, Decedent returned to the Wapsi property in Clinton County, Iowa. Decedent resumed his role as caretaker of the Wapsi property in exchange for being allowed to live on the property.

Following Decedent's departure from Arkansas in May of 1978, Petitioner consulted an attorney and commenced divorce proceedings in Arkansas on June 2, 1978. Service of notice of the pending action was made by publication on July 14, 21, 28 and August 4, in the Cabot Star-Herald, Cabot, Arkansas, with Proof of Publication being filed September 1, 1978. Petitioner, having learned from a mutual friend that Decedent had returned to Iowa, furnished, through her attorneys, Harry Roth's Davenport, Iowa, address to the Arkansas court-appointed attorney ad-litem, who, by certified mail, return receipt requested, on July 26, 1978, notified Decedent by warning order of the pending Arkansas divorce proceeding. The attorney ad-litem was appointed for the sole purpose of informing Decedent of the Arkansas divorce proceeding by certified

mailing. Decedent never obtained an Arkansas attorney to represent him in the Arkansas proceedings, and Decedent never filed any pleadings in the Arkansas Court.

Following receipt of said certified letter, Decedent obtained the services of the late Jacob H. Jepsen, a Davenport, Iowa, attorney, who corresponded by mail with Attorney Ben Rice, Petitioner's Arkansas divorce attorney. Attorney Jepsen never filed any pleadings on Decedent's behalf in the Arkansas court.

On September 14, 1978, a default divorce decree was entered by the Arkansas court, ordering bonds owned by the parties to remain jointly owned. The bonds in question, U.S. Series E savings bonds, had been redeemed by Decedent prior to the entry of the Arkansas decree, between a period from July 31, 1978, to August 2, 1978. As

noted by the Iowa trial court, on September 19, 1978, Attorney Rice wrote to Attorney Jepsen, stating, "(We) have proceeded to enter a divorce decree without adjudicating the property rights of the jointly owned bonds." (Pet. App. 28) No evidence was introduced that Decedent ever returned to Arkansas after his May, 1978, departure.

As noted by the Iowa trial court in its decision, the Arkansas court expressly found, "[P]laintiff [Petitioner herein] is a resident and domiciliary of the State of Arkansas and the Court has complete jurisdiction of the necessary parties hereto and the subject matter of this cause of action." (Pet. App. 28) The Arkansas court never found Decedent to be a domiciliary of Arkansas. Petitioner, in her divorce complaint filed in the Arkansas court, had alleged that Decedent and Petioner were residents

of Arkansas, and the Arkansas Court had sustained the allegation in its default decree.

At the time of the marriage of the parties, the bonds at issue were solely owned by Decedent. Petitioner made no contribution for the purchase of the bonds.

Shortly after the marriage and prior to his separation from Petitioner, Decedent re-registered the bonds in co-ownership form between Decedent and Petitioner. The bonds were stored in a safety deposit box leased jointly in Decedent's and Petitioner's names in the First Jacksonville Bank, Jacksonville, Arkansas. On May 24, 1978, prior to Decedent's departure from Arkansas, Decedent removed the bonds from the safety deposit box and took them to Iowa where he subsequently redeemed them.

Until after Decedents death in Iowa on February 3, 1984, Petioner made no effort to enforce the Arkansas decree or procure an interest in the bonds. On September 4, 1988, Petitioner filed a claim in Decedent's estate demanding the sum of $48,000.00 for bonds allegedly held jointly with decedent and awarded to both Claimant and Decedent pursuant to the terms of the Arkansas Dissolution Decree. On December 9, 1984, Petitioner filed an Amplification of Claim claiming one-half the value of the U.S. savings bonds, allegedly owned jointly by Claimant and Decedent either as a result of the provisions of an Arkansas divorce decree dated September 14, 1978, or as a result of a gift to Petitioner from Decedent of a one-half interest in the bonds during their marriage, which bonds had been redeemed by Decedent prior to September 14, 1978, without an accounting

or payment to Petitioner. On September 29, 1987, the trial court ruled against Petitioner on both grounds. (Pet. App. 17-36) The Iowa trial court found the Arkansas divorce decree provisions purporting to affect Decedent's rights in any marital property to be non-binding upon Decedent, as, "Based upon constructive notice only, the Arkansas court was without jurisdiction over the person of the decedent. . . ." (Pet. App. 32)

Petitioner appealed the Iowa trial court's decision, alleging that the trial court had erred in finding the property distribution provisions of the Arkansas decree to be void because of the Arkansas Court's lack of in personam jurisdiciton over Decedent. The Iowa Court of Appeals affirmed the Iowa trial court's decision, finding that, based on constructive notice only, the Arkansas court lacked in

personam jurisdicion over decedent, as decedent was a nonresident and non-domiciliary of Arkansas at the time of such service; and Decedent did not consent to the Arkansas Court's jurisdiction or enter his appearance in the Arkansas proceeding. (Pet. App. 1-14)

Petitioner never raised the issue of the validity of Arkansas "long-arm" jurisdiction in procuring in personam jurisdiction over out-of-state parties to Arkansas divorce proceedings. Petitioner failed to raise this issue at the trial court level. Neither did Petitioner raise this issue on appeal to the Iowa Court of Appeals nor in Petitioner's request for further review by the Iowa Supreme Court. Petitioner has raised this issue for the first time in her petition fora writ of certiorari.

Similarly, Petitioner did not challenge, either in the Iowa trial court, on appeal to the Iowa Court of Appeals, or in her request for further review by the Iowa Supreme Court, the ability of the Iowa trial court to examine and determine Decedent's domicile at the time of constructive service of notice of the Arkansas divorce complaint upon Decedent. Petitioner has raised this issue for the first time in her petition for a writ of certiorari.

## REASONS WHY THE PETITION SHOULD BE DENIED

### I.

### SUMMARY OF ARGUMENT

Petitioner has improperly raised for the first time in her petition for a writ of certiorari the issue of the Arkansas divorce court's ability, through its long-arm statute, to obtain *in personam* jurisdiction over Decedent while Decedent was in Iowa. Furthermore, the

constructive service of notice employed by Petitioner in serving Decedent with notice of the Arkansas divorce proceedings did not comply with the service requirements of the Arkansas long-arm statute in effect at the time of service. The form of service did not meet with the extraterritorial personal service requirements of the long-arm statutes of other states which allow extraterritorial service of process to obtain in personam jurisdiction over out-of-state parties in divorce proceedings. Petitioner's petition for a writ of certiorari should be denied.

## ARGUMENT

In her petition for a writ of certiorari, Petitioner has raised, for the first time, the issue of the ability of the Arkansas divorce court to obtain in personam jurisdiction over an out-of-state defendant, Decedent herein, to an

Arkansas divorce proceeding by service of notice on the out-of-state defendant pursuant to the Arkansas long-arm statute. The U.S. Supreme Court has stated that it will not consider an issue first raised by the petition for certiorari. Heath v Alabama, 474 U.S. 82, 87, 88 L.E. 2d 387, 393, 106 S. Ct. 433 (1985). This issue was never presented by Petitioner at any level in the Iowa courts, and Petitoner may not raise this issue for the first time by her petition for a writ of certiorari.

Had Petitioner argued this issue before the Iowa courts, she would have discovered that the Arkansas long-arm statute in effect which the Arkansas Supreme Court had held applicable to out-of-state spouses whose last matrimonial domicile was Arkansas, was not utilized by Petitioner. In Bunker v. Bunker, 552 S.W. 2d 641 (Arkansas 1977), a case

relied upon by Petitioner, the Bunkers had resided together in Drew County, Arkansas, for seven or eight months until November of 1975, when the defendant "left Arkansas and apparently changed his domicile to Lousiana." Bunker, p. 642 The Arkansas Supreme Court went on to state,

> In January, 1976, Mrs. Bunker filed this suit for divorce, in Drew County, asserting a cause of action for personal indignities that occured while the defendant was domiciled in Arkansas. Her attoneys knew that a valid divorce decree could be obtained in Drew County, which was Mrs. Bunker's domicile and also the last matrimonial domicile. But counsel also wanted to obtain personal judgments for alimony, child support, and attorney's fees. To that end, no attempt was made by to obtain constructive service by warning order, which would have supported a divorce decree only. Instead, service was had upon the Arkansas Secretary of State, pursuant to Act 119 of 1963. Bunker v. Bunker, 552 S.W. 2d 641, 642 (Arkansas 1977) (emphais added).

The Arkansas Supreme Court went on to hold that service of notice made

pursuant to said statute, gave the Arkansas divorce court in personam jurisdiction over the nonresident, non-domiciliary spouse to enter personal judgments against such spouse when Arkansas was the last matrimonial domicile.

The Arkansas long-arm statute cited by Arkansas Supeme Court provides as follows:

> 27-339-1. Service on resident and nonresident defendants out of state - Secretary of state agent for service of process - Procedure.
> (1) Any cause of action arising out of acts done in this State by an individual in this State or by an agent or servant in this State of a foreign corporation may be sued upon in this State, although the defendant has left the State, by process served upon or mailed to the individual or corporation outside the state.
> (2) From and hereafter the passage and approval of this act [Sects. 27-339.1, 27-339.2], any person, resident or nonresident, who commits acts in this State sufficient to give and indidual in this State a cause of action against the person committing said acts, shall have

deemed to have appointed the secretary of state as his agent for service of process on him in any suit arising out of said acts committed by said resident or nonresident.

(3) Service of such process shall be made by serving a copy of the process on the secretary of state and such service shall be sufficient service upon said nonresident person or any resident person, who is [has] subsequently absented himself physically from the State or upon the executor, administrator or other legal representative of his estate, in case he has since deceased, provided that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff or his attorney to the defendant at his last known address or to the administrator, executor or other legal representative of the estate in case said person has deceased, and the defendant's return receipt or the return receipt of such administrator, executor or other legal representative of such deceased person is attached to the writ of process and entered and filed in the office of the clerk of the court wherein such cases are brought. The court in which the action is pending may order some continuance as may be necessary to afford the defendant or defendants reasonable opportunity to defend the act.

(4) The secretary of state upon receiving a copy of said service of summons shall also forthwith mail a copy of said summons together with a

> copy of the complaint to the last and best known address of the named defendant in said suit, notifying him of the filing of said suit. (5) Defendants so summoned shall have thirty (30) days in which to answer after service upon them. 1963 Ark. Acts 119, Sect. 1, 332 (current version at Ark. Stat. Ann. Sect. 16-58-120 (1987)

Clearly, the service of notice by Petitioner upon Decedent in the Arkansas divorce proceeding did not comply with the service required by Bunker to obtain in personam jurisdicition over an out-of-state spouse such that the Arkansas divorce court could rule that the savings bonds in issue were to remain jointly owned by Petitioner and Respondent. Petitioner never served the Arkansas Secretary of State with notice or complied with the other provisions as required by the above Arknasas long-arm statute under Bunker.

The Fifth Circuit Court of Appeals has used this form of inquiry in

resolving the issue ofwhether or not a non-forum state must give the personal judgments of a divorce decree rendered in a sister state full faith and credit when service of notice of the divorce proceeding is upon an out-of-state defendant. In Conlon by Conlon v. Heckler, 719 F. 2d 788 (5th Cir. 1983), the Plaintiff-Appellant, a Texas resident and domiciliary, had initiated a divorce proceeding in Texas. Defendant-Appellee, a Vermont resident, had been personally served with notice of the Texas proceeding in Vermont. Plaintiff-Appellant contended that the Texas divorce court had acquired in personam jurisdiction over the Defendant-Appellee by virtue of the Texas long-arm statute. The Court of Appeals, in examining the form of service in question, found that the Texas court had not obtained in personam jurisdition over Defendant-

Appelle. Defendant-Appellee had not been served under the Texas long-arm statute which would have puportedly extended jurisdicition over an out-of-state defendant. Rather, even though said Defendant-Appelle was personally served, such service was made under a procedural rule which did not purport to confer in personam jurisdiciton over an out-of-state defendant. The personal judgments entered by the Texas court were not, therefore, entitled to full faith and credit by Vermont courts. Conlon by Conlon v. Heckler, 719 F. 2d 788, 791-797 (5th Cir. 1983)

While Bunker v Bunker held that the Arkansas long-arm statute could reach ot-of-state defendants to provide an Arkansas divorce court with in personam jurisdicition over an out-of-state defendant where Arkansas was the last matrimonial domicile; under Conlon by

Conlon v. Heckler, that long-arm statute must be utilized before an Arkansas divorce court can obtain personal jurisdiction over an out-of-state defendant to enter enforceable personal judgments against same. Petitioner failed to serve Decedent under the Arkansas long-arm statute held by the Arkansas Supreme Court to give Arkansas divorce courts in personam jurisdiciton over out-of-state, nondomicilary defendants. As the Arkansas divorce court failed to obtain in personam jurisdicition over Decedent, any personal judgments rendered against him were void. Vanderbilt v. Vanderbilt, 354 U.S. 416, 1 L.Ed. 2d 1456, 77 S. Ct. 1360, (1957)

Petitioner has asserted that six state supreme courts have considered domestic relations long-arm statutes and have found same to confer in personam jurisdiction over out-of-state spouses.

(Pet. 12-16) In the five state cases cited by Petitioner, the matrimonial long-arm statutes involved required personal service of process upon an out-of-state defendant before the divorce court could obtain personal jurisdiction over an out-of-state defendant. Whitaker v. Whitaker, 230 S.E. 2d 486, 487 (Georgia 1976); Dillon v. Dillon, 176 N.W. 2d 362, 366 (Wisc. 1970); Soule v. Soule, 14 Cal. Rptr. 417, 418 (Cal. App. 1961); Mizner v. Mizner, 439 P. 2d 679, 681 (Nev. 1968); and Mitchim v. Mitchim, 518 S.W. 2d 362, 365 (Texas 1975). Service by certified mail, return receipt requested would have been insufficient to confer in personam jurisdiction under the matrimonial long-arm statutes, and, in all likelihood, statutes allowing such servicemay violate the Constitutional due process requirement of fundamental mandated by this Court in International

Shoe Co. v. Washington, 326 U.S. 310, 90 L.E.d. 95, 66 S.Ct. 154 (1945).

Contrary to Petitioner'a assertion, the decision of the Iowa Court of Appeals in upholding the Iowa trial court's denial of Full Faith and Credit to the personal judgment portion of the Arkansas decree does not conflict with the decisions of other state courts which uphold personal judgments entered pursuant to long-arm statutes, matimonial or otherwise. The Arkansas long-arm statute which the Arkansas Supreme Court has held confers personal jurisdiction over out-of-state defendants in an Arknasas divorce proceeding was not utilized by Petitionere in serving Decedent. Furthermore, the constructive service of notice upon Decedent would no meet with the extraterritorial personal service requirements of the matrimonial long-arm statutes.

II.

## SUMMARY OF ARGUMENT

Again, Petitioner has improperly raised for the first time in her petition for a writ of certiorari the issue of the legal propriety of the Iowa trial court's determination of Decedent's domicile at the time he was constructively served with notice of the Arkansas divorce proceeding. Petitioner's assertions to the contrary, the Iowa trial court could determine Decedent's domicile.

Petitioner did not challenge the standing of Respondent to collaterally attack the validity of the Arkansas divorce decree until Petitioner filed his Application for Further Review by the Iowa Supreme Court. Again, Petitioner's contention is without merit, as Respondent had standing to attack the validity of the decree. Petitioner's petition for a writ of certiorari should be denied.

## ARGUMENT

In her petition for a writ of certiorari, Petioner has raised, again for the first time, the issue of the legal propriety of the Iowa trial court's examination of Decedent's domicile at the time he was served with notice of the Arkansas divorce proceeding. Petitioner may not raise this issue for the first time in his petition for writ of certiorari. Heath v Alabama, 474 U.S. 82, 87, 88 L.E. 2d 387, 393, 106 S. Ct. 433 (1985) This issue was never presented by Petitioner at any level in the Iowa courts, and Petitoner may not raise this issue for the first time by her petition for a writ of certiorari.

Even had petitioner raised this issue in the Iowa courts, the Iowa trial court was not required to give full faith and credit to the Arkansas divorce decree because decedent was not a domicilary of

Arkansas at the time the Arkansas divorce proceeding was commenced, and the Iowa trial court so found. The Arkansas divorce court never found decedent to be a domiciliary of Arkansas.

The U.S. Supreme Court has held that a divorce decree rendered in one state may be collaterally attacked by proof that the court which rendered the decree had no jurisdiction, even though the record of the proceedings in that court purports to show jurisdiction. Williams v. North Carolina, 325 U.S. 226, 229, 89 L. Ed. 1577, 65 S. Ct. 1092 (1945) (emphasis added). The Court went on to hold,

> As to the truth or existence of a fact, like that of domicil[e], upon which depends the power to exert judicial authority, a State not a party to the exertion of such judicial authority in another State but seriously affected by it has a right, when asseting its own unquestionable authority, to ascertain the truth or existence of that crucial fact.

Williams v. North Carolina, 322 U.S. 226, 230 (1945). Accordingly, even had the Arkansas Court determined that it was the domicile of Decedent, the trial court, as noted by the Court of Appeals, was not precluded from re-examining the question of decedent's domicile. (Pet. App. 11) See Restatement (Second) of Conlict of Laws Sect. 71, Comment b (1971). The trial court correctly applied its own rules of domicile when determining the judicial jurisdiction of Arkansas. (Pet. App 11) See Restatement (Second) of Conflict of Laws Sect. 13, Comment b (1971).

The issue of the Respondent's standing to attack the validity of the Arkansas divorce decree was never raised by Appellant at trial or in her briefs and oral argument before the Iowa Court of Appeals. Petitioner raised this issue for the first time in her Request for

Further Review by the Iowa Supreme Court. Under Iowa law, issues not presented at trial in the district court cannot be raised or reviewed on appeal; the theory under which a case was tried in trial court will be the theory upon which an appeal is based. Shill v. Careage Corp., 353 N.W. 2d 416, 420 (Iowa 1984) Even issues of constitutional magnitude will not be addressed by the Court of Appeals if not addressed by the trial court. In the Interest of W.E.G., 342 N.W. 2d 900, 901 (Iowa Ct. App. 1983)

Even if the reviewing court were to consider Petitioner's argument of lack of standing by Respondent to collaterally attack the Arkansas decree, the court would find that Respondent had the requisite standing to collaterally attack the Arkansas court's jurisdiction to order a property settlement with regard to the bonds. In Johnson v. Muelberger,

340 U.S. 581, 95 L.Ed. 552, 71 S.Ct. 474 (1951), cited by Petitioner for the proposition that Respondent was without standing under the Full Faith and Credit clause to attack the jurisdiction of the Arkansas court, a daughter of a decedent collaterally attacked the jurisdiction of the sister state court where the divorce decree had been rendered. In said sister state which granted the divorce, decedent had answered the divorce petition on the merits and had full opportunity to contest the jurisdictional issues. Johnson, p. 582. The U.S. Supreme court held that where the decedent had appeared and contested the case on the merits, the decree in that state could not be collaterally attacked by a sister state on jurisdictional grounds under the Full Faith and Credit clause. Johnson, p. 589.

Such is not the case here. It is uncontroverted that Decedent never appeared in the Arkansas proceeding, never answered Petitioner's divorce petition, and never subjected himself to the Arkansas court's jurisdiction. Respondent was not, therefore, precluded from collaterally attacking the jurisdiction of the Arkansas court under Johnson v. Muelberger.

Petitioner next asserts, as she asserted for the first time in her Request for Further Review by the Iowa Supreme Court, that the Arkansas court would hold its decision to be res judicata as to the issues of Decedent's residence and domicile, even though the Arkansas Court made no finding as to Decedent's domicile, and that the equitable principle of laches would apply to bar the re-opening of the Arkansas decree in Arkansas. Under Iowa law,

Appellant may not raise issues on appeal that were not raised in the trial court. Shill v. Careage Corp., 353 N.W. 2d 416, 420 (Iowa 1984). As Respondent has, however, established that the Iowa trial court could collaterally attack the validity of the Arkansas decree for lack of jurisdiction under Williams v. North Carolina, it is irrelevant as to what position the Arkansas court may have taken had it re-examined its decree.

The Iowa courts have followed the mandates of this Court in determining whether or not foreign divorce decreees are entitled to Full Faith and Credit under the U.S. Constitution.

## Conclusion

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Scott H. Walters
1503 Brady Street
Davenport, Iowa 52803
(319) 323-8348
Counsel of Record for
Respondent

Dated July 26, 1989.